In the High Court of Punjab and Haryana, Chandigarh.

C.W.P. No.2321 of 2003

Date of Decision: 15.5.2007

Darshana Kumari.

…Petitioner.

Versus

The State of Punjab and Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Ms.Alka Chatrath, Advocate
for the petitioner.

Mr.Amol Rattan Singh,
Additional Advocate General, Punjab
for respondents.

JUDGMENT

M.M.KUMAR, J.

The petitioner who was working on the post of Art & Craft Teacher in Chanan Devi Memorial School, Salim Tabri, Ludhiana, has claimed that she is entitled to be absorbed in the service of the School after it has been taken over by the respondent-State on 15.12.1994. It is undisputed that the

aforementioned School was taken over by the respondent-State on 15.12.1994. According to the clauses in the Gift Deed, it has been stipulated that the Government was not bound to take all the members of the School Staff under their own control and would have full authority to take only those employees out of the existing one who were trained; and who possessed the requisite qualifications. The petitioner was working on the post of Art & Craft Teacher and had earlier approached this Court along with six others by filing of **Civil Writ Petition No. 4610 of 1996** titled as **"Harpreet Kaur & Others v. State of Punjab & Others"** (Annexure P9). A Division Bench of this Court while disposing of the aforementioned petition along with other petitions on 25.11.1998 had issued directions to consider the suitability and eligibility of the petitioner to be absorbed in the Government service and to pass appropriate order within the specified period. The aforementioned directions were also based on the stipulation made in the Gift Deed to which reference has been made in the Division Bench judgment rendered in **Civil Writ Petition No. 4610 of 1996** (supra). It is also undisputed that the petitioner does not possess the qualification prescribed for the post of Art & Craft Teacher as prescribed by Rule 6 read with Entry 11 of the Appendix of the Punjab Privately Managed Recognized Schools Employees (Security of Service) Rules, 1981 (for brevity "the Rules"). According to Rule 6 of Entry No.11 of Appendix, an Art & Craft Teacher is required to possess qualification of Matric with two years Diploma in Arts & Crafts from any institution approved by the Industrial training Organization. According to the preliminary objection taken in the written statement, the case of the petitioner was considered and she was not found eligible on account of lack of the statutory qualification.

After hearing the learned counsel for the parties, we are of the

considered view that this petition merits dismissal. It is well settled that the rights of employees of taken over Schools are determined in accordance with the terms & conditions. In the present case, the gift deed and the memo dated 15.12.1994 constitute the basis of taking over the erstwhile School known as "Chanan Devi Memorial School, Salim Tabri, Ludhiana" and the same read as under:-

"GIFT DEED:

That the Government is not bound to take all the members of the School staff under their own control. The Government will have the full authority to take only those employees out of those who are trained and possess the requisite qualifications.

MEMO DATED 15.12.1994

That only those members of the staff would be taken into Government service who fulfill the prescribed qualification have good service record and considered suitable for Government service/employment by the prescribed selection, agency of the Government.

ORDER DATED 17.5.1995

Masters/Mistresses who do not fulfill the condition of the subject combination and other minor requirements will not be given regular grade unless they make up the deficiency and as such become eligible for the purpose. It should also be verified that all the categories of the staff have passed Punjabi/Hindi at the Matric level, if any of them has not done so far, he/she will have to pass it within a year. In case of failure, his/her service will be

liable to be terminated forthwith".

The aforementioned clauses of the gift deed and memo came up for consideration of a Division Bench of this Court in **Harpreet's case** (supra) in which the petitioner was also one of the party. After considering the import of the aforementioned clauses of the gift deed and the memo, the Division Bench, on 25.11.1998, had issued the following directions:-

> "For the reason mentioned above, the Writ Petitions are allowed. The respondents are directed to consider the suitability and eligibility of the petitioners to be absorbed in Government service and pass appropriate order within three months of the submission of the certified copy of this order".

After examining the case of the petitioner for her absorption as Art & Craft Teacher, the respondents have passed the order on 22.7.2002 pointing out that the petitioner had passed the Teacher Training Course in November 1995 and she did not possess the aforementioned qualification on 15.12.1994 when the School was taken over. On account of non-fulfillment of statutory qualification as per the terms of taking over as well as the directions issued by the Division Bench in **Harpreet's case** (case), the services of the petitioner could not be taken over from the date she is qualified i.e. in November 1995. Even otherwise, it is evident that the petitioner does not fulfill the educational qualification of Art & Craft Teacher as provided by Rule 6 read with Entry 11 of Appendix to the Rules for the post of Art & Craft Teachers as she merely possessed the qualification of Matric, Diploma in the trade of Cutting & Tailoring and Diploma in the trade of Embroidery & Needle Work. She does not possess the qualification of Matric with two years Diploma in Art & Craft from any Institution approved by the Industrial Training

Organization. Therefore, her claim for absorption as Art & Craft Teacher in the taken over School has been rightly rejected.

There is no merit in the petition. Dismissed.

(M.M.KUMAR)
Judge

May 15, 2007 **(RAJESH BINDAL)**
dkb **Judge**